

Sentencing

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Appendix

Sentencing

6-01 DETERMINING SENTENCING

A. Proper Considerations

As a general rule, the sentencing judge has certain basic considerations which are:

1. the possibility of reforming the individual;
2. the protection of society;
3. the disciplining of the offender; and
4. the likelihood of deterring others from committing like offenses

Each sentence should be individualized, but should also reflect sentences for similar crimes.

[People vs Coles, 417 Mich 523; 339 NW2d 440 (1983)] (See Section 4-04 also.)

B. Improper Considerations

As a general rule, the judge may not:

1. penalize the defendant for refusing to plead guilty;
[People v Hogan, 105 Mich App 473; 307 NW2d 72 (1981)]
2. consider the defendant's refusal to admit guilt;
[People v Yennior, 399 Mich 892; 282 NW2d 920 (1977)]
3. penalize the defendant for exercising the right to a trial;
[People v Courts, 401 Mich 57; 257 NW2d 101 (1977)]
4. penalize the defendant for demanding a jury trial;
[People v Earegood, 383 Mich 82; 173 NW2d 205 (1970)]
5. penalize the defendant for exercising the right against self-incrimination;
[People v Anderson, 391 Mich 492; 216 NW2d 780 (1974)]
6. ask the defendant to take a polygraph, or to consider the results of a polygraph, unless the defendant freely consents; [People v Allen, 49 Mich App 148; 211 NW2d 533 (1973)]
7. augment a sentence on the basis of a belief that the defendant lied under oath;
[People v Anderson supra]

8. consider a prior felony or misdemeanor conviction if the conviction was obtained without the benefit of counsel or a valid waiver of counsel;
[People v Moore, 391 Mich 426; 216 NW2d 770 (1974)]
 9. consider prior convictions obtained in violation of the defendant's constitutional right to counsel;
[People v Moore supra]
 10. consider prior guilty plea convictions obtained in violation of Boykin v Alabama, 394 US 238; 89 S Ct 1709; 23 L Ed 2d 274 (1969) or People v Jaworski, 398 Mich 21; 194 NW2d 868 (1972);
 11. impose a sentence that is premised on the basis of race, religion, or national origin;
[People v Gjidodo, 140 Mich App 294; 364 NW2d 698 (1985)]
 12. set a sentence in accord with any local sentencing policy, because a sentence must be individualized; [People v Chapa, 407 Mich 309; 284 NW2d 340 (1979)]
 13. use speculative legislatively authorized early release provisions, such as the Emergency Power Act, to justify augmenting a sentence;
[People v Humble, 146 Mich App 198; 379 NW2d 422 (1985)]
 14. consider the effect of disciplinary credits, which the defendant may or may not receive;
[People v Stack, 156 Mich App 564; 402 NW2d 7 (1986)]
- or
15. sentence in violation of public policy. In People v Baum the court held that it violated public policy to require the defendant to remain out of state during the period of probation. [People v Baum, 251 Mich 187; 231 NW 95 (1930)]

C. Additional Considerations

1. **Drunk Driving Law.** (See Criminal Sentencing/Administrative Consequences Chart in Section 6 Appendix.)

a. Trial Procedures

1) Time Lines for Case Processing of Misdemeanor

- a) Except as otherwise stated in MCL 257.625b, defendant must be arraigned within 14 days of arrest. [MCL 257.625b(1)]

- b) A pretrial must be held within 35 days; 42 days in multi-county districts where there is only one judge. [MCL 257.625b(2)] Either side may have one 14-day adjournment. The defendant must attend the pretrial.
- c) The case must be disposed of within 77 days of the date the issued or reissued arrest warrant is served, whichever is later. [MCL 257.625b(3)] "Final disposition" refers to a plea or finding of guilt, not sentencing. Statutory exceptions for not meeting the disposition time frame are the unavailability of the defendant, material evidence, or witnesses; interlocutory appeals; or other exceptional circumstances. Docket congestion cannot be an excuse. The court shall not dismiss a case or impose any other sanction for a failure to comply with any of these time limits.

2) Plea Taking

The court need only advise the defendant that licensing sanctions will be determined based upon the master driving record maintained by the Secretary of State. [MCL 257.625b(4)]

3) Second and Third Offenses

- a) Prior statutory references are defined at MCL 257.625(11)(c).
- b) If the prosecuting attorney intends to seek an enhanced sentence, second or third offense status must be charged in the complaint or information. [MCL 257.625(15)]

Prior convictions are established at sentencing by one or more of the following:
1) an abstract of conviction; 2) a copy of the defendant's driving record; or 3) an admission by the defendant. [MCL 257.625(17)]

b. Sentencing

1) Conviction

A person convicted of attempted OWI, OWVI, or OWPD shall be punished as if the offense has been completed. [MCL 257.204b]

2) License Sanctions

License sanctions are based on the master driving record maintained by the Secretary of State and are imposed administratively by the Secretary of State as indicated by statute. The court does not order licensing sanctions. [MCL 257.319, MCL 257.320a, MCL 257.625b(4)]

3) Vehicle Immobilization

Vehicle immobilization is based upon the master driving record maintained by the Secretary of State and is imposed by the court. Immobilization may not begin until after any jail sentence is served. Minimum and maximum days of immobilization are based on the number of prior conviction. [MCL 257.625(11)(e), MCL 257.904d]

4) Criminal penalties [MCL 257.625]

The court shall impose a criminal penalty for a conviction of an attempted violation of the motor vehicle act or a local ordinance substantially corresponding to a provision of the motor vehicle act as if the offense had been completed. [MCL 257.204b] See the Criminal Sentencing/Administrative Consequences Chart in the Appendix for criminal penalties. A prior conviction means any conviction under MCL 257.625 and MCL 257.625m.

c. Conviction or Civil Infraction Determination Occurring During a Period of Suspension, Revocation, or Denial

1) License Sanctions

A person convicted of or receiving a civil infraction determination resulting from a violation that occurred during a period of suspension, revocation, or denial receives license sanctions based on the master driving record maintained by the Secretary of State and imposed by the Secretary of State as indicated by statute. The court does not order licensing sanctions. [MCL 257.904(10), (11), (12), (13)]

2) Vehicle Immobilization

Vehicle immobilization is based upon the master driving record maintained by the Secretary of State and is imposed by the court. Immobilization may not begin until after any jail sentence is served. Minimum and maximum days of immobilization are based on the number of prior convictions. [MCL 257.625(11)(e), MCL 257.904d]

2. Testing for HIV, Hepatitis B Infection, and Venereal Disease

a. Authority

The authority for testing for disease/infection is MCL 333.5129. A model protocol and forms for this procedure were developed by the Michigan Department of Public Health. (See copies in the Section 6 Appendix. See also SCAO Approved Form MC 234, Order for Counseling and Testing for Disease/Infection in the Appendix.)

b. Definition

Cases involving an individual arrested and charged with violating section MCL 750.145a, 750.338, 750.338a, 750.338b, 750.448, 750.449, 750.449a, 750.450, 750.452, 750.455, 750.520b, 750.520c, 750.520d, 750.520e, or 750.520g; 333.7404; or a local ordinance prohibiting prostitution, solicitation, gross indecency, or the intravenous use of a controlled substance. Specific titles are as follows:

333.7404	Use of controlled substance or controlled substance analogue
750.145a	Accosting, enticing, soliciting child for immoral purposes
750.338	Gross indecency; between male persons
750.338a	Gross indecency; between female persons
750.338b	Gross indecency; between male & female persons
750.448	Soliciting and accosting
750.449	Admitting to place for purpose of prostitution
750.449a	Engaging services for purpose of prostitution, lewdness, or assignation, offer to engage; penalty
750.450	Aiders and abettors
750.452	House of ill-fame, keeping, maintaining
750.455	Pandering
750.520b	First degree criminal sexual conduct
750.520c	Second degree criminal sexual conduct
750.520d	Third degree criminal sexual conduct
750.520e	Fourth degree criminal sexual conduct
750.520g	Assault with intent to commit criminal sexual conduct

c. Responsibility of the Court**1) At Arraignment [MCL 333.5129(2)]**

If an individual has been arrested and charged with violating one of the statutes mentioned above, the judge or district court magistrate responsible for setting the individual's conditions of release pending trial shall distribute to the individual the information on disease/infection required to be distributed by county clerks under section 5119(1); and shall recommend that the individual obtain additional information and counseling at a local health department testing and counseling center regarding disease/infection. Counseling under this subsection shall be voluntary on the part of the individual.

2) Upon Bindover [MCL 333.5129(3)]

If a defendant is bound over to the circuit court and the district court determines there is reason to believe that the offense involved sexual penetration or exposure to a body fluid of the defendant, the district court shall order the defendant to be

examined or tested for disease/infection and receive treatment or, at a minimum, the required information.

3) Upon Conviction [MCL 333.5129(4)]

If a defendant is convicted of violating any of the above statutes, the court shall order, at conviction, that the defendant be examined or tested for disease/infection. Also, if a defendant is assigned to youthful trainee status rather than being convicted, the court shall order the defendant to be tested.

Upon conviction or assignment to youthful trainee status, for any of the above mentioned statutes, the court shall also order the defendant to receive counseling including, at a minimum, information regarding treatment, transmission, and protective measures.

4) Notice to Victims [MCL 333.5129(5)]

If the victim (or person with whom the defendant engaged in sexual penetration during the course of the crime) consents, the court shall provide the person or agency administering the test with the name, address, and telephone number of the victim. After the defendant is tested, the persons or agency administering the test shall immediately provide the test results to the victim.

5) Keeping Records Confidential [MCL 333.5129(6)]

The test results or any other research information obtained by the testing agency shall be transmitted to the court and, after the defendant is sentenced, made part of the court record. However, the records shall be confidential and shall be disclosed only to the defendant, the local health department, the Department of Public Health, and the victim, except as otherwise provided by law.

If the defendant is placed in the custody of the Department of Corrections, the court shall transmit a copy of the defendant's test results and any other medical information to the Department of Corrections. The statute does not address convictions by the district courts which result in jail terms.

d. Forms

The following forms will be used by district court in conjunction with testing and counseling for disease/infection:

- 1) Order for Counseling and Testing for Disease/Infection (MC 234)
- 2) Assignment to Youthful Trainee Status (MC 242)

The following form may be used depending on the local practice of the courts.

- 1) Judgment of Sentence, Commitment to Jail (MC 219)

The following form may be used as determined necessary.

- 1) Order for Vehicle Immobilization (MC 267)

6-02 DELAYED SENTENCE

MCL 771.1(2) allows the sentencing judge to delay sentences for up to one year in cases where probation may be appropriate:

[I]n an action in which the court may place the defendant on probation, the court may delay sentencing of the defendant for not more than one year to give the defendant an opportunity to prove to the court his or her eligibility for probation or other such leniency as may be compatible with the ends of justice and the defendant's rehabilitation. When sentencing is delayed, the court shall enter an order stating the reason for the delay, upon the court's records. The delay in passing sentence does not deprive the court of jurisdiction to sentence the defendant at any time during the extended period. See People v Monday, 70 Mich App 518; 245 NW2d 811 (1976); People v McLott, 70 Mich App 524; 245 NW2d 814 (1976).

While MCL 771.1 does not specifically authorize a court to place a person on probation for violating a local ordinance, case law permits placing such a person on probation if the ordinance violation is also a statutory violation. People v Sarnoff, 302 Mich 266; City of Detroit v Del Rio, 10 Mich App 617. Because MCL 771.1(2) states that, "In an action in which the court may place the defendant on probation, the court may delay sentencing the defendant...", without reference to subsection (1), courts may conclude that it is proper to utilize the delayed sentencing provisions of MCL 771.1 for an ordinance violation that is also a statutory violation. The court should not delay sentence for an ordinance violation which does not substantially correspond to a statute violation.

A defendant placed under probation on a delayed sentence may be referred to the Drug Treatment Court program under MCL 600.1070.

6-03 HOLMES YOUTHFUL TRAINEE ACT

A. Authority and Definition

MCL 762.11 and MCL 762.13 provides the sentencing judge with the means for ordering rehabilitative treatment and/or custodial supervision for up to 2 years in district court or up to 3 years in circuit court for:

1. persons charged with offenses other than
 - a. a felony for which the maximum punishment is life imprisonment;
 - b. a major controlled substance offense; or
 - c. a traffic offense; and
2. juveniles over 15 years of age who have been waived from circuit court, without proceeding to an adjudication of guilt and a criminal conviction.

A defendant placed on Youthful Trainee Status may be referred to the Drug Treatment Court program under MCL 600.1070.

B. Conditions

1. The offense must have been committed on or after the offender's 17th birthday but before his or her 21st birthday.
2. The offender must consent to being placed on HYTA status.
3. The offender must plead guilty.
4. Upon violation of any term of probation, the court may terminate the youth's trainee status, enter an adjudication of guilt and proceed with sentencing as provided by law. Credit must be given against the sentence for time served as a youthful trainee in a county jail. The court, as a condition of a commitment to the county jail or a condition of probation, may authorize work release or release for education purposes. The rights accorded probationers subject to revocation should also be applied to youths under the Holmes YTA status. [See People v Roberson, 22 Mich App 664; 177 NW2d 712 (1970)]
5. An assignment of a youth to the status of youthful trainee, as provided in this chapter, shall not be deemed to be a conviction of crime and such person shall suffer no civil disability, right or privilege following his or her release from such status because of such assignment as a youthful trainee.

6. All proceedings relative to the disposition of the criminal charge and to the assignment as a youthful trainee shall be closed to public inspection, but open to the courts of the state, the department of corrections, the department of social services and law enforcement personnel in the performance of their duties.

C. Forms

The following forms should be used in conjunction with placement on Holmes Youthful Trainee Status:

1. Assignment to Youthful Trainee Status, MC 242. A copy of this form must be sent by the clerk of the court to the Michigan State Police Criminal Justice Information Center to create a criminal history record as required under MCL 769.16a.
2. Order of Probation - Misdemeanor, DC 243. As a local option, this form can be modified to show that HYTA status has been assigned to an offender.
3. Petition and Order for Discharge from Probation, MC 245. A copy of this form shall be sent by the clerk of the court to the Michigan State Police Criminal Justice Information Center to create a criminal history record as required under MCL 769.16a.

6-04 DEFERRED JUDGMENT OF GUILT

A. Controlled Substance Act (known as Section 7411 of the Public Health Code)

1. Authority and Definition

MCL 333.7411 gives the authority to defer proceedings and impose probation with terms and conditions without a judgment of guilt for certain offenders charged with possession or use of certain drugs. A defendant placed on probation under a deferred judgment of guilt may be referred to the Drug Treatment Court program under MCL 600.1070.

2. Conditions

- a. The defendant must plead guilty or be found guilty of the offense, but no judgment of guilt is entered.
- b. The defendant must consent to this status, but the prosecutor does not.
- c. The only persons eligible are those with no prior drug convictions who are charged with Possession of Controlled Substances under MCL 333.7403 (2) (a) (iv), (b), (c) or (d) or use of controlled substance under MCL 333.7404, or those charged either the 1st or 2nd time with Possession of Imitation Controlled Substances under MCL 333.7341.
- d. The defendant must be placed on probation by the judge.
- e. The judge may require an instruction program on misuse of drugs or a rehabilitation program.
- f. Jail time is allowable.
- g. Discharging the defendant and dismissing charges after successfully completing any conditions of probation is mandatory and without adjudication of guilt.
- h. If a term or condition of probation is violated, the court may enter an adjudication of guilt.
- i. There may be only one discharge and dismissal afforded to an offender under this status.
- j. Upon fulfillment of the terms and conditions of probation, the Michigan State Police Criminal Justice Information Center shall retain a non-public record of an arrest and discharge or dismissal. This record shall be furnished to a court or police agency upon request for the purpose of showing that a defendant in a criminal action involving the possession or use of a controlled substance or an imitation controlled substance has

already once used this status. A person subjected to a civil fine for a first violation of MCL 333.7341(4) is not considered to have previously been convicted of an offense under this status. During the term of probation, the record maintained by the Criminal Justice Information Center is not considered "non-public."

B. Spouse Abuse Act

1. Authority and Definition

MCL 769.4a gives the authority to defer proceedings and impose probation with terms and conditions without a judgment of guilt for certain offenders charged with assault upon spouse, former spouse, or household member. A defendant placed on probation under a deferred judgment of guilt may be referred to the Drug Treatment Court program under MCL 600.1070.

2. Conditions

- a. The defendant must plead guilty or be found guilty of the offense but no judgment of guilt is entered.
- b. The defendant must consent to this status.
- c. The only persons eligible are those with no prior convictions for assault under MCL 750.81 or 750.81a.
- d. The defendant must be placed on probation by the judge.
- e. The judge may require the defendant to participate in and pay for a mandatory counseling program.
- g. Discharging the defendant and dismissing charges after successfully completing any conditions of probation is mandatory and without adjudication of guilt.
- h. If a term or condition of probation is violated, the court may enter an adjudication of guilt.
- i. There may be only one discharge and dismissal afforded to an offender under this status.
- j. Upon fulfillment of the terms and conditions of probation, the Michigan State Police Criminal Justice Information Center shall retain a non-public record of an arrest and discharge or dismissal. This record shall be furnished to a court or police agency upon request for the purpose of showing that a defendant in a criminal action under MCL 750.81 or 750.81a has already once availed himself or herself of this section. During the

term of probation, the record maintained by the Criminal Justice Information Center is not considered "non-public."

C. Health Care Professionals

1. Authority and Definition

MCL 750.430(8) gives the authority to defer proceedings and impose probation with terms and conditions without a judgment of guilt for licensed health care professionals charged with engaging in the practice of his or her health profession with a bodily alcohol content of .05 or more, or while under the influence of a controlled substance causing a visible impairment to his or her ability to safely and skillfully engage in the practice of his or her health profession. A licensed health care professional means an individual licensed or registered under article 15 of the public health code, MCL 333.16101 to 333.18838. A defendant placed on probation under a deferred judgment of guilt may be referred to the Drug Treatment Court program under MCL 600.1070.

2. Conditions

- a. The defendant must be convicted under MCL 750.430.
- b. The defendant must consent to this status.
- c. The only persons eligible are those with no prior convictions under MCL 750.430.
- d. The individual's conduct must not have resulted in physical harm or injury to the patient.
- e. The judge may require the defendant to participate in and pay for a mandatory counseling program.
- f. The defendant shall be ordered to participate in the health professional recovery program established in MCL 333.16167.
- g. Discharging the defendant and dismissing charges after successfully completing any conditions of probation is mandatory and without adjudication of guilt.
- h. If a term or condition of probation is violated, the court may enter an adjudication of guilt.
- i. There may be only one discharge and dismissal afforded to an offender under this status.

- j. Upon fulfillment of the terms and conditions of probation, the Michigan State Police Criminal Justice Information Center shall retain a non-public record of an arrest and discharge or dismissal. This record shall be furnished to a court or police agency upon request for the purpose of showing that a defendant in a criminal action under MCL 750.430 has already once availed himself or herself of this section. During the term of probation, the record maintained by the Criminal Justice Information Center is not considered "non-public."

D. Liquor Control Code

1. Authority and Definition

Effective September 1, 2004, MCL 436.1703 gives the authority to defer proceedings and impose probation with terms and conditions without a judgment of guilt for a person who has not previously been convicted of or received a juvenile adjudication for a violation of that section. A deferred judgment of guilt is discretionary by the court if the defendant meets the statutory requirements.

2. Conditions

- a. The defendant must plead guilty to the offense but no judgment of guilt is entered.
- b. The only persons eligible are those with no prior convictions of this section, being a minor who purchases, consumes or possesses alcoholic liquor or attempts to purchase, consume or possess alcoholic liquor, or have any bodily alcohol content.
- c. The defendant must be placed on probation.
- d. The court may require participation in substance abuse prevention services or substance abuse treatment and rehabilitation services, community service, and to undergo substance abuse screening and assessment the defendant's expense, payment of costs including minimum state cost and the cost of probation oversight.
- e. Jail time is not allowable.
- f. Discharging the defendant and dismissing charges after successfully completing any conditions of probation is mandatory and without adjudication of guilt.
- g. If a term or condition of probation is violated, the court may enter an adjudication of guilt.
- h. There may be only one discharge and dismissal afforded to an offender under this status.

- i. Upon placement on deferred sentence and probation the court shall notify the Michigan Department of State of the deferred sentence and it shall retain a non-public record.
- j. While on deferred sentence and probation the court shall retain a non-public record.
- k. Upon fulfillment of the terms and conditions of probation, the court shall notify the Department of State of the discharge and dismissal. The Department shall retain a non-public record of the plea and of the discharge or dismissal. This record shall be furnished to a court, prosecutor or police agency upon request for the purpose of determining if an individual has already utilized this status. The record shall also be available to the department of corrections, a prosecutor, or a law enforcement agency upon request if the individual is an employee or applicant for employment of the requesting agency only to determine which an employee has violated his or her conditions of employment or whether an applicant meets criteria for employment.

3. Ordinance Violations

Deferred proceedings are allowed under this statute only for violations of this statute. Deferred proceedings are not allowed for a violation of a substantially corresponding local ordinance. In order for the court to have authority to defer judgment of guilt on a substantially corresponding local ordinance a municipality must amend its ordinance to provide for the deferred proceedings as outlined in statute.

E. Drug Treatment Court

1. Authority and Definition

A drug treatment court is a court supervised treatment program for individuals who abuse or are dependent upon any controlled substance or alcohol. An individual may not be admitted to a drug treatment court pursuant to an agreement that would permit a discharge or dismissal of a traffic offense upon successful completion of the program, or if he or she is a violent offender as defined in MCL 600.1060(g).

Effective January 1, 2005, MCL 600.1070 gives the authority, upon agreement with the individual and the prosecutor, to defer proceedings and impose probation with terms and conditions without a judgment of guilt for a person who has met statutory eligibility requirements for a deferment.

Note, see also the discussion in section 6-05 for drug court participation by persons not eligible for a deferred judgment of guilt under the drug treatment court statute.

2. Conditions

- a. The defendant must plead guilty to the offense but no judgment of guilt is entered.
- b. The defendant must be placed on probation.
- c. The court may require participation in treatment and prevent services, education, and mandatory periodic and random testing for the presence of any controlled substance or alcohol in blood, urine, or breath.
- d. Discharging the defendant and dismissing charges after successfully completing the drug treatment court program is mandatory and without adjudication of guilt.
- e. If a term or condition of the drug treatment court program is violated, the court may enter an adjudication of guilt.
- f. There may be only one discharge and dismissal afforded to an offender under this status.
- g. Upon fulfillment of the terms of the drug treatment court program, the court and the Michigan State Police Criminal Justice Information Center shall retain a non-public record of the arrest and discharge and dismissal. This record shall be furnished to a court, the department of corrections, law enforcement personnel, and prosecutors only for use in the performance of their duties or to determine whether an employee of the agency has violated his or her conditions of employment or meets criteria for employment.

F. Forms

After determining that probation has been successfully completed, a petition for discharge from probation must be completed and submitted to the sentencing judge for approval and signature. After the sentencing judge signs the petition, the original should be placed in the court file and copies should be supplied to the probationer and probation file. Additionally, an electronic transfer of the information contained in this order, or a photocopy of this order must be sent to the Michigan State Police Criminal Justice Information Center. This form is necessary to ensure that official records of the probationer will be classified as a **non-public record** by the Criminal Justice Information Center.

The following forms should be used:

1. Order of Probation - Misdemeanor, DC 243. The appropriate box must be checked under "Judgment of guilt is deferred under." Additionally, a photocopy of this order must be sent to the Michigan State Police Criminal Justice Information Center to create a criminal history

record as required under MCL 769.16a.

2. Petition and Order for Discharge from Probation, MC 245. The appropriate box must be checked indicating that the defendant is discharged from probation supervision and that the case shall be retained as a **non-public record** and a copy sent to the Michigan State Police Criminal Justice Information Center.

6-05 DRUG TREATMENT COURT

A. Authority and Definition

A drug treatment court is a court supervised treatment program for individuals who abuse or are dependent upon any controlled substance or alcohol. An individual may not be admitted to a drug treatment court if he or she is a violent offender as defined in MCL 600.1060(g).

Effective January 1, 2005, MCL 600.1070 gives the authority, upon agreement with the individual and the prosecutor, to sentence and impose probation with terms and conditions for a person who has met statutory eligibility requirements for drug court participation but who is not eligible for a deferred judgment of guilt under the drug treatment court statute. The court may also place a person in drug treatment court who is eligible for a deferred judgment of guilt under the Holmes Youthful Trainee Act [MCL 762.11], the Public Health Code [MCL 333.7411], the Spouse Abuse Act [MCL 769.4a], or the Penal Code (health care professional) [MCL 750.430].

Section 6-04 discusses drug court participation by persons eligible for a deferred judgment of guilt pursuant to the drug treatment court statute.

B. Conditions

1. The defendant must plead guilty to the offense. A judgment of guilt is entered.
2. The defendant must be placed on probation.
3. The court may require participation in treatment and prevention services, education, and mandatory periodic and random testing for the presence of any controlled substance or alcohol in blood, urine, or breath.

C. Forms

After determining that probation has been successfully completed, a petition for discharge from probation must be completed and submitted to the sentencing judge for approval and signature. After the sentencing judge signs the petition, the original should be placed in the court file and copies should be supplied to the probationer and probation file. Additionally, an electronic transfer of the information contained in this order, or a photocopy of this order must be sent to the Michigan State Police Criminal Justice Information Center. This form is necessary to ensure that official records of the probationer will be classified as a **non-public record** by the Criminal Justice Information Center.

The following forms should be used:

1. Order of Probation - Misdemeanor, DC 243. The appropriate box must be checked under "Judgment of guilt is deferred under." Additionally, a photocopy of this order must be sent to the Michigan State Police Criminal Justice Information Center to create a criminal history record as required under MCL 769.16a.
2. Petition and Order for Discharge from Probation, MC 245. The appropriate box must be checked indicating that the defendant is discharged from probation supervision and that the case shall be retained as a **non-public record** and a copy sent to the Michigan State Police Criminal Justice Information Center.
3. Judgment of Sentence/Commitment to Jail, MC 219. Upon discharge from probation, the court must send a revised judgment to the Michigan State Police Criminal Justice Information Center. In addition to the sentence, the court must indicate whether the probationer successfully or unsuccessfully completed Drug Treatment Court.

6-06 CONDITIONAL SENTENCE

A. Authority and Definition

Conditional sentences may be imposed where a fine or imprisonment is authorized by statute. MCL 769.3 provides if punishment for an offense is either a fine or imprisonment, a judge may sentence conditionally. The judge can order a fine with or without costs within a specified period of time. The defendant may be incarcerated for failure to pay.

B. Conditions

1. First offenders convicted of offenses carrying less than a five-year maximum, may, in the alternative, be sentenced to a jail sentence not to exceed six months. [MCL 750.506]
2. Persons convicted for the first time of unauthorized use of a motor vehicle may have their sentences reduced to three months in the county jail or a \$500 fine. [MCL 750.414]
3. The defendant is entitled to a hearing prior to incarceration for his failure to pay fine and/or costs as part of this type of sentence. [Reardon v Georgia, 461 US 660 (1983)]
4. If the court imposes a conditional sentence, any restitution ordered shall be a condition of that sentence. [MCL 769.1a] The conditional sentence statute further states that, "if a person is convicted of an offense punishable by a fine or imprisonment or both, the court may impose a conditional sentence and order the person to pay a fine, with or without the costs of prosecution, and restitution as provided under section MCL 769.1a or the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, within a limited time stated in the sentence and, in default of payment, sentence the person as provided by law. . . . Except for a person who is convicted of criminal sexual conduct in the first or third degree, the court may also place the offender on probation with the condition that the offender pay a fine, costs, damages, restitution, or any combination in installments with any limited time and may, upon default in any of those payments, impose sentence as provided by law." [MCL 769.3]

The court may impose imprisonment under the conditional sentence if the defendant fails to pay restitution. In determining whether to impose imprisonment, the court must take into account the defendant's employment status, earning ability, and financial resources, the willfulness of the defendant's failure to pay, and any other special circumstances that may have a bearing on the defendant's ability to pay before incarcerating defendant. [MCL 769.1a and MCL 771.3]

5. When a person has been convicted of domestic violence, or when a prior conviction of domestic violence is included in a criminal history record, which meets the definition of domestic violence in US Code, Title 18, Section 922(g)(9), a condition of probation prohibiting the defendant from possessing, carrying, or purchasing a firearm or ammunition should be included. (See also Section 4-03, C.)
6. If the court orders conditions reasonably necessary for the protection of one or more named persons, the court or a law enforcement agency within the court's jurisdiction shall enter the order or amended order of probation into the law enforcement information network (LEIN). If the order is rescinded or amended, the order in the LEIN shall be amended or removed accordingly. [MCL 771.3(2)(o) and (4)] (See also Section 7-05, page 7-05-03)

C. Forms

Conditional sentences must be specified on the Judgment of Sentence (MC 219) and the Order of Probation (DC 243) if applicable.

6-07 OTHER ALTERNATIVES

A. Community Service Work

Community service work is often used as part of a sentence or probation term for various offenses. Community service work may be performed in lieu of payment of fines and costs.

1. Authority

Where probation is an authorized sentence, in most, but not all felonies and misdemeanors, the court may require the probation to engage in community services as a condition of probation. [MCL 771.3(2)(e)]

As part of the sentence for a violation of operating a vehicle while intoxicated (OWI), operating while visibly impaired (OWVI), operating with presence of drugs (OWPD), minor in possession of alcohol, transporting or possessing open alcohol in a motor vehicles, and minor transporting or possessing alcohol in a motor vehicle, a court may order a person to perform community service as designated by the court without compensation for a specified period. [MCL 257.624a(3), MCL 257.624b(1), MCL 257.625, and MCL 436.1703(1)]

- a. up to 360 hours for first offenses of OWPD, OWI, and OWVI.
- b. between 30 and 90 days for prior convictions of OWPD, OWI, and OWVI.

A prior conviction means any conviction under MCL 257.625(1), (3), (4), (5), (6), (7), (8), and (23) and MCL 257.625m.

2. Liability

The Attorney General has issued opinions that person placed in community service programs are not employees of the governmental unit under the Michigan Workers Compensation Disability Act. It appears that participants injured in community service programs would not be entitled to workers compensation benefits. [OAG, 1983-1984, No. 6158, P. 129 (June 24, 1983), OAG, 1971-1976, No. 5061, P. 522 (June 28, 1976)]

Another consideration is governmental liability for injuries or damages to persons performing community service, third parties, or property. There may be governmental immunity if the community service program is a governmental function, that is, an activity which is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law. [MCL 691.1407, Ross v Consumers Power Co. 420 Mich 567; 363 NW2d 641 (1984)]

3. Insurance

Since governmental immunity may not provide complete coverage, the possibility of accident and health insurance for the participant and liability insurance for the governmental agency should be explored by the court. There are insurance policies that provide coverage for community service programs.

There is also the possibility that insurance premiums can be recovered from probationers. A court may impose as a cost, expenses specifically incurred for providing probationary oversight to the probationer. [MCL 771.3(5)]

In OWI, OWPD, and OWVI cases the statute authorizes reimbursement for the cost of supervision for defendants sentenced to community service. Arguably, the cost of providing insurance for community service programs is such an expense. [MCL 257.625(14)]

4. Safety Considerations

Any community service program should take into consideration the safety of the participant and the public. The program should be tailored to minimize risk. This can be done by incorporating the following suggestions into any community service program.

- a. The candidates for the program should have a physical to determine the ability to perform anticipated work.
- b. Participants should be supplied with safety equipment including, but not necessarily limited to, gloves, goggles, safety helmets, safety shoes, or whatever else may be deemed appropriate.
- c. Injuries to participants should receive immediate attention by a medical doctor and the doctor should make a written report.
- d. Incidents resulting in injury or damage to participants, third parties, or property should be the subject of a narrative report.
- e. Participants should not be allowed to operate power equipment or vehicles.
- f. Participants should not be involved in programs that have contact with the general public.
- g. Special care should be used to develop programs that do not require the participants to work on or around dangerous areas such as roads, utilities, or water.

B. Intensive Probation

1. Authority

Although intensive probation is not specifically mentioned, the authority for this falls under MCL 771.3 which is the statute for probation conditions. As cited, probationers can be ordered to report "monthly, or as often as the probation officer may require."

2. Highlights

- a. Applicants must first be screened to see if they meet the criteria for eligibility.
- b. Probationers may be subject to close supervision which may include a variety of conditions, but is not limited to, employment checks, home visits, daily contact with the probation officer, curfews, and submitting to a preliminary breath test (PBT).
- c. Supervision is typically implemented during the first phase of a defendant's probation status and may not necessarily continue throughout the complete term of probation.

C. Victim Impact Panel

1. Authority and Definition

The Victim's Panels are not dictated by statute. Victim's Panels are held nationwide and sponsored by the Mother's Against Drunk Driving (MADD) organization. They consist of a panel of victims and survivors of drunk driving crashes who speak briefly about their experience which may include death of a loved one and/or injury to themselves. Drunk driving offenders or other persons convicted of alcohol-related crimes can be required to attend as an element of their sentence. There is no interaction between victims and offenders.

2. Forms

Forms can be obtained through the local chapter of MADD.

D. Tether/Electronic Monitoring and Detention

1. Authority

There is no statutory authority for this alternative.

2. Definition

A variety of devices used as an alternative to incarceration or for an early-release program. The devices include, but are not limited to, a wrist bracelet, ankle bracelet, and television monitor with or without a preliminary breath tester attached. The devices may be monitored by telephone or radio frequency. The court has the authority to specify the terms such as hours and location for each individual case.

3. Violations

When sentencing a defendant for a probation violation, the defendant is not entitled to credit for time he or she spent on an electronic tether program. [People v Smith, 195 Mich App 147; 489 NW2d 135 (1992)]

(See also Section 7-03, page 7-03-02.)

6-08 UNDER ADVISEMENT

A. Definition and Authority

To take a case under advisement is to take a plea of guilty and place the individual under the supervision of the court, without conviction or sentence, for a specified period of time.

No statutes or court rules have been identified which authorize district courts to take a plea of guilty under advisement.

6-09 PROBATIONARY SENTENCES

A. Authority and Definition

The authority for probationary sentences is found in MCL 771.1(1). Probation may be imposed for all misdemeanors and all felonies **except** for murder, treason, armed robbery, major controlled substances offenses, and first and third degree criminal sexual conduct.

B. Conditions

1. The maximum term of probation is 5 years for felonies and 2 years for misdemeanors. [MCL 771.2(1)]
2. The maximum term of probation is 5 years for misdemeanor stalking. [MCL 750.411h(3), MCL 771.2a]
3. Life probation is authorized for **some** offenses of the sex offenders registration act. [MCL 771.1(3)]
4. A probation term of five years is required for a person found guilty but mentally ill. [MCL 768.36(4)]
5. A term may be reduced at the discretion of the court except for lifetime probation and the 5 year mandatory probationary term for guilty but mentally ill defendants. [MCL 771.2(2)]
6. The judge must order that the probationer:
 - a. must not leave the state without judicial consent;
 - b. report regularly to a probation officer;
 - c. refrain from violating any criminal law of Michigan, the United States, or another state or any ordinance of any municipality in Michigan or another state;
 - d. shall pay restitution to the victim of the defendant's course of conduct giving rise to the conviction or to the victim's estate;
 - e. shall pay an assessment; and
 - f. shall comply with the sex offenders registration act if required to be registered pursuant to the act.

[MCL 771.3(1)]

7. New conditions may also be imposed even though there has been no violation of the original order. [People v Marks, 340 Mich 495; 65 Nw2d 698 (1954)]
8. A court may suspend probation and then reinstate it as long as it occurs within the statutory maximum period. Probation must end either by revocation or termination at the end of that maximum. [People v Sherman, 38 Mich App 219; 196 NW2d 15 (1972)]

C. Types

There are several types of probation: 1) supervised, 2) unsupervised, and 3) non-reporting. (See Sections 7-02 and 7-03 for more details.)

6-10 FINANCIAL PENALTIES

A. Authority and Definition in General

Sentences in Michigan can only be imposed in accordance with specific statutory authority. A term or condition of a sentence not expressly authorized by statute or a sentence in excess of that provided by a relevant statute, is unlawful and must be vacated. [People v Neil, 99 Mich App 677; 299 NW2d 23 (1980)]

Michigan law provides for four categories of financial penalties for criminal offenses: fine, costs, assessments, and restitution. Costs cannot be imposed as a condition of probation without a finding that the defendant has or will have the ability to pay. [MCL 771.3(7)(a), People v Gleason, 139 Mich App 445; 363 NW2d 3 (1984); People v Blaney, 139 Mich App 694; 363 NW2d 13 (1984); People v Alvarado, 142 Mich App 151; 369 NW2d 462 (1984)] Restitution and special assessments should be ordered as required under MCL 771.3(1)(e) and (f). An order of restitution entered under the Crime Victim's Rights Act remains effective until it is satisfied in full. [MCL 780.826(13)]

The probation statute specifically outlines how costs are to be determined and assessed. State minimum costs shall be ordered as a condition of probation pursuant to MCL 769.1j and MCL 771.3(1)(g). Payment of restitution is regulated by MCL 780.826 and 780.827. MCL 771.3(6) and (7) provides as follows:

- (6) If the court imposes costs as part of a sentence of probation, the following shall apply:
- (a) The court shall not require a probationer to pay costs unless the probationer is or will be able to pay them during the term of probation. In determining the amount and method of payment of costs, the court shall take into account the probationer's financial resources and the nature of the burden that payment of costs will impose, with due regard to his or her other obligations.
 - (b) A probationer who is required to pay costs and who is not in willful default of the payment of the costs may petition the sentencing judge or his or her successor for a remission of any unpaid portion of those costs. If the court determines that payment of the amount due will impose a manifest hardship on the probationer or his or her immediate family, the court may remit all or part of the amount due in costs or modify the method of payment.
- (7) If a probationer is required to pay costs as part of a sentence of probation, the court may require payment to be made immediately or the court may provide for payment to be made within a specified period of time with specified installments.

(See also Section 3-04)

B. Fine and Costs

1. Authority

A penal fine and costs may only be imposed when authorized by the specific penal statute under which the defendant is convicted. [People v Neil, supra] Such statutes are MCL 257.907(2) for civil infractions, MCL 769.3 for conditional sentences, and MCL 771.3 for probation.

2. Credits to Fine

Jail time must be credited against a fine if **only** a fine is imposed. The judge must credit the defendant \$5.00 for each day previously served in jail.
[MCL 780.73]

3. Limitations on Costs

Court costs imposed as a condition of probation are limited to expenses specifically incurred in prosecuting the case, providing legal assistance to the defendant, and overseeing probation. [MCL 771.3(5)]

State minimum costs of \$40.00 for a simple misdemeanor and \$45.00 for specified and serious misdemeanors must be a condition of probation.

Costs which may not be considered in determining the amount of costs are: 1) juror per diem [People v Hope, 297 Mich 115; 297 NW 206 (1941)]; 2) medical care for the defendant [People v Kramer, 137 Mich App 324; 358 NW2d 10 (1984); and 3) maintenance of governmental agencies [People v Teasdale, 335 Mich 1; 55 NW2d 149 (1952)].

4. Finding of Ability to Pay

A judge **must** make a finding on the defendant's ability to pay when ordering court costs. The defendant waives the rights to challenge an order on appeal if he or she fails to raise the issue in a timely manner. [People v Music, 428 Mich 356; 408 NW2d 795 (1987)]

5. Restrictions

A defendant cannot be sentenced to imprisonment in jail and to pay court costs or face additional jail time. A sentence of this nature is outside of the statutory provisions. [People v Tims, 127 Mich App 564; 339 NW2d 488 (1982); People v Watts, 133 Mich App 80; 348 NW2d 39 (1984).

C. Restitution

1. Authority

People v Neil, supra stated that restitution may only be ordered when authorized by the specific penal statute under which the defendant is convicted. This case predates the Crime Victim's Rights Act which was enacted in 1985 and, therefore, is no longer applicable with regard to restitution. MCL 780.826(2) states that "Except as provided in MCL 780.826(8), when sentencing a defendant convicted of a misdemeanor, the court shall order, in addition to or in lieu of any other penalty authorized by law or in addition to any other penalty required by law, that the defendant make full restitution to any victim of the defendant's course of conduct that gives rise to the conviction or to the victim's estate."

Restitution may also be ordered as a condition of probation MCL 771.3(1), or under MCL 769.1a generally. The court may also order restitution under the Crime Victim's Rights Act. [MCL 780.826]

Under MCL 780.826(11) and (13) and MCL 769.1(11), if the defendant is placed on probation or the court imposes a conditional sentence as provided in MCL 769.2, any restitution ordered shall be a condition of that probation or sentence. An order of restitution entered under the Crime Victim's Rights Act remains effective until it is satisfied in full. An order of restitution is a judgment and lien against all property of the defendant for the amount specified in the order of restitution. The lien may be recorded as provided by law. Because restitution remains in effect until satisfied in full, the order of restitution **must** be specified in the judgment of sentence or in a separate order of restitution. If probation is ordered, the order of restitution must **also** be specified in the order of probation.

2. Finding of Ability to Pay

a. Generally

The judge **must** make a finding on the defendant's ability to pay when ordering restitution. The defendant waives the rights to challenge an order on appeal if he or she fails to raise the issue in a timely manner.

b. Crime Victim's Rights Act

When restitution is imposed under the Crime Victim's Rights Act, the judge **must** consider the financial resources and earning ability of the defendant, and the financial needs of the defendant and his or her dependents.

3. Objections to Restitution

When restitution is imposed as a condition of probation and objected to by the defendant, the amount of the loss and defendant's ability to pay must be presented on the record. [People v Music supra] If imposed under the Crime Victim's Rights Act, the court, in determining whether to order restitution, may order the probation agent to obtain relevant information. Any dispute must be resolved on the record by a preponderance of the evidence. A preponderance of the evidence is the burden of proof required for determining the amount of restitution.

4. Failure to Pay

If a judge determines that a defendant has failed to pay restitution, the court must take into account the defendant's employment status, earning ability, and financial resources; the willfulness of failure to pay; and any other special circumstances affecting the probationer's ability to pay before incarcerating the defendant for violation of probation. [MCL 771.3(8) and MCL 780.826(11), (14)]

5. Other

A judge may order that restitution be paid to an insurance company. [MCL 780.766(8) (felony cases only) and People v Bond, 99 Mich App 861; 297 NW2d 620 (1980)]

6. Wage Assignment

The probationer may be asked to agree to pay by wage assignment any restitution, assessment, fine, or cost imposed by the court. [MCL 771.3(2)(f)]

D. Other Assessments

In addition to fines, costs, and restitution, conviction for some offenses may require other assessments.

1. Crime Victim Fee [MCL 780.901]

The court shall order each person convicted of certain offenses to pay an assessment of \$50.00 for misdemeanors and \$60.00 for felonies, which is transmitted to the Crime Victim's Rights Fund. See pages 6-13-01 and 6-13-02 for a listing of the specific offenses.

The assessment required is in addition to any fine, costs, or other assessments imposed by the court. The assessment shall be ordered upon the record, and shall be listed separately in the judgment of sentence or order of probation.

2. Reimbursement of Emergency Response Costs [MCL 769.1f]

If the person convicted is placed on probation or parole, any reimbursement ordered shall be a condition of that probation or parole. The court may revoke probation or parole if the person fails to comply with the order and if the person has not made a good faith effort to comply with the order. In determining whether to revoke probation or parole, the court shall consider the person's employment status, earning ability, number of dependents, and financial resources, the willfulness of the person's failure to pay, and any other special circumstances that may have a bearing on the person's ability to pay.

3. Drug Court Treatment Program Fee

If a person is placed in the drug treatment court, he or she may be required to pay a reasonable drug court fee that is reasonably related to the cost to the court for administering the drug treatment court program as provided in the memorandum of understanding under MCL 600.1062. The fee is transferred monthly to the court funding unit.

6-11 HABITUAL OFFENDER

Both the circuit and district court can enhance sentences for the habitual or repeat offender. For the most part, enhanced sentencing occurs for felony offenses; however, the district court can enhance sentences for the following misdemeanors:

1. OWI/OWVI/OWPD upon prior conviction [MCL 257.625(15)];
2. Driving on a suspended license upon second offense or more [MCL 257.904];
3. Checks without sufficient funds under \$50 upon second offense or more [MCL 750.131];
4. Prostitution upon second offense or more [MCL 750.451];
5. Buying, receiving, possessing, or concealing stolen property under \$100 upon third offense or more [MCL 750.535].
6. Minor in possession of alcohol [MCL 437.1703]; and
7. Selling or furnishing alcohol to a minor [MCL 436.1701]

NOTE: The defendant may only receive an enhanced sentence if he or she has been specifically charged and convicted as a repeat offender. [People v Ancksornby, 231 Mich 271 (1925)]

6-12 SENTENCING HEARING

A. Right to Counsel

The presence of counsel is required in district court if the defendant has counsel unless the defendant does not have one or the presence of counsel is waived. [MCR 6.610(F)(1)] An indigent defendant who is without an attorney and has not waived the right to an attorney may not be sentenced to jail. [MCR 6.610(D)(2)] (See also Section 3-01.)

A sentence may not be influenced by a defendant's past convictions obtained in violation of the right to counsel. [United States v Tucker, 404 US 44; 92 S Ct 589; 30 L Ed 2d 592 (1972)]

B. Who Should be Present

1. The defendant has the right to be present at sentencing. [People v Bingaman, 144 Mich App 152; 375 NW2d 370 (1984)]
2. It is not required that the defendant have the right to be present at a presentence conference between the court and defense counsel. [People v Pulley, 411 Mich 523; 309 NW2d 170 (1981)]
3. The judge's in-chambers conference with the prosecutor, in the absence of defendant or defense counsel, entitled the defendant to resentencing. [People v VonEverett, 110 Mich App 393; 313 NW2d 130 (1981)]
4. Where the trial judge held an ex parte conference prior to sentencing with the victim, outside the presence of the defendant and his counsel, after defendant's plea was accepted but before sentence was imposed, the events were analogous to a presentence investigator's interview with the victim. Resentencing is not required. [People v Rodriguez, 124 Mich App 773; 335 NW2d 831 (1989)]
5. The victim has the right to be present and make a statement at sentencing. [MCL 780.825]
6. The prosecutor has the right to be present at the sentencing and the right to challenge the accuracy or relevancy of any information contained in the presentence report. [MCL 771.14(5), MCR 6.425(B)]

C. Disclosure of Presentence Report

1. The court is required to allow the defendant and counsel the opportunity to review the presentence report at a reasonable time before the day of sentencing. [MCR 6.425(B) and MCR 6.610(F)(2)]

2. The defense counsel has a right to see the presentence report before sentencing in order to make sure the defendant's sentence is based on accurate information. [People v McFarlin, 389 Mich 557; 208 NW2d 504 (1973)]
3. Any supplements to a presentence report which are given to the court must also be provided to the defendant or his counsel, prior to sentencing the defendant. [People v Matzat, 108 Mich App 327; 310 NW2d 231 (1981) and People v Raymond, 119 Mich App 413; 326 NW2d 526 (1982)]
4. The court may exempt from disclosure:
 - a. parts of the report which are not relevant to a proper sentence;
 - b. diagnostic opinions that might seriously disrupt a program of rehabilitation; and
 - c. sources of information that were obtained on a promise of confidentiality.
5. The defendant is entitled to review the presentence investigation report before sentencing but not to receive a copy of the report. [MCL 771.14(4), MCR 6.425(B)]

(See also Section 4-03.)

D. Probation Officer Responsibility

The probation officer may be called to verify or justify the presentence investigation report at sentencing. Depending on local practice, the probation officer may be called in-chambers to respond (informal) or be challenged on the record (formal).
[MCL 771.14(5)]

6-13 CRIME VICTIM'S RIGHTS FUND

A. Authority

The Crime Victim's Rights Fund was established under the Criminal Assessment Act of 1989 to compensate victims of certain crimes. District and circuit courts are required to order each person convicted of certain offenses to pay an assessment which is transmitted to the Crime Victim's Rights Fund. [MCL 780.901 et seq.] The specific offenses are as follows:

1. any felony offense;
2. a serious misdemeanor as defined by MCL 780.811;
 - a. assault and battery under MCL 750.81.
 - b. assault and infliction of serious injury (aggravated assault) under MCL 750.81a.
 - c. breaking and entering or illegal entry under MCL 750.115.
 - d. enticing a child for immoral purposes under MCL 750.136b.
 - e. child abuse in the fourth degree under MCL 750.145a.
 - f. discharge of a firearm intentionally aimed at a person under MCL 750.234.
 - g. discharge of an intentionally aimed firearm resulting in injury under MCL 750.235.
 - h. indecent exposure under MCL 750.335a.
 - i. leaving the scene of a personal injury accident under MCL 257.617a.
 - j. OWI, OWVI, OWPD under MCL 257.625 or OUIL, UBAC, or OWI under MCL 324.80176 if the violation involves an accident resulting in physical injury or death to a person or damage property.
 - k. selling or furnishing alcoholic liquor to individual under 21 years of age resulting in physical injury or death to any individual under MCL 436.1701.
 - l. stalking under MCL 750.411h.
 - m. a violation of a local ordinance substantially corresponding to one of the above offenses.
 - n. a violation charged as a crime or serious misdemeanor but subsequently reduced to or pleaded to as a misdemeanor.
3. specified misdemeanors:
 - a. failure to stop on direction of police or conservation officers under MCL 257.602a.
 - b. drunk driving under MCL 257.625(1) or (3).
 - c. drunk driving, ORVs under MCL 324.81134 and .81135.
 - d. drunk boating under MCL 324.80176.
 - e. drunk flying under MCL 259.185.
 - f. drunk driving, locomotive engines under MCL 462.353 and .355.
 - g. driving on revoked/suspended license under MCL 257.904.
 - h. reckless driving under MCL 257.626.
 - i. snowmobile offenses under MCL 324.82127.
 - j. controlled substance, drug paraphernalia under MCL 333.7401 through .7461.
 - k. anabolic steroid under MCL 333.17766a.

- l. furnishing alcohol to a person under 21 under MCL 436.1703.
- m. embezzlement under MCL 750.174.
- n. fraud under MCL 750.218.
- o. selected larceny under MCL 750.356, MCL 750.359, 750.362, and 760.362a.
- p. retail fraud, 2nd degree under MCL 750.356d.
- q. malicious destruction under MCL 750.377a and MCL 750.380.
- r. failure to obey officers direction to stop vehicle under MCL 750.479a.
- s. receiving stolen goods under MCL 750.535.
- t. malicious use of telephone under MCL 750.540e.
- u. a violation of a local ordinance substantially corresponding to one of the above offenses.

[MCL 780.811 and MCL 780.901]

B. Responsibilities of the Court

The probation officer may have responsibility for monitoring the payment of assessments. Persons convicted of a felony will be ordered to pay \$60.00 to be transmitted to the Crime Victim's Rights Fund; and persons convicted of a serious misdemeanor, or a specified misdemeanor under statute (ordinances not authorized), will be ordered to pay \$50.00. If the court allows the payment of fines, costs, restitution, and other fees to be paid in installments, 50% of all money collected shall be applied to payment of Crime Victim Rights Fund and restitution and the balance shall be applied to all other assessments in the following priority:

- 1. payment of costs,
- 2. payment of fines,
- 3. payment of probation supervision fees,
- 4. payment of assessment and other payments.

[MCL 780.905]

C. Report of Nonpayment of Restitution

In each case in which payment of restitution is ordered as a condition of probation, the probation officer shall review the case not less than twice yearly to ensure that restitution is being paid as ordered. The final review shall be conducted not less than 60 days before the expiration of the probationary period. If it is determined that restitution is not being paid as ordered, the officer shall file a written report with the court and the prosecuting attorney using SCAO Approved Form MC 258, Report of Nonpayment of Restitution (see Appendix 6 for copy of form). [MCL 780.826(15)]

In consultation with the local prosecuting official, providing a copy of the Motion, Affidavit, and Bench Warrant (MC 229), Motion, Affidavit and Summons (MC 246), or Petition and Order for Discharge from Probation (MC 245) may meet the notice requirement for unpaid restitution.

APPENDIX 6

Blood Alcohol Chart

Deferred Judgment of Guilt and Delayed Sentence for Adult Offenders,
Comparison of Processing Chart

Guidelines for Processing Circuit and District Court Cases under
Deferred Judgment of Guilt and Delayed Sentence Statutes

Criminal Sentencing/Administrative Consequences Chart

Minor in Possession of Alcohol and Intoxicants in a Motor Vehicle Chart

Model Procedure for Court Ordered Counseling and Testing

Victim Authorization Regarding Notification of Test Results

Notification Regarding Defendant's Test Results

Order for Counseling and Testing for Disease/Infection (MC 234)

Judgment of Sentence (MC 219 and CC 219b)

Order for Vehicle Immobilization (MC 267)

Assignment to Youthful Trainee Status (MC 242)

Order of Probation (DC 243)

Motion and Order for Discharge from Probation (MC 245)

Report of Nonpayment of Restitution (MC 258)

Financial Statement (MC 287)

Motion, Affidavit, and Bench Warrant (MC 229)

Motion, Affidavit and Summons Regarding Probation Violation (MC 246)

DEFERRED JUDGMENT OF GUILT AND DELAYED SENTENCE FOR ADULT OFFENDERS; COMPARISON OF PROCESSING

Revised 4/05 SCAO F:\Criminal\Deferred Judgment of Guilt

Action	Delayed Sentence MCL 771.1	Deferred Judgment of Guilt and HYTA ¹	Drug Court 2004 PA 224 MCL 600.1060 – 600.1082 Effective January 1, 2005.	
			Defer/Delay ²	Traditional; Not eligible for Defer/Delay ³
Plea of Guilt or Finding of Guilt	Accepted and judgment of guilt entered.	Accepted but judgment of guilt not entered.	Accepted but judgment of guilt not entered.	Accepted and judgment of guilt entered.
Referral	May place on probation up to 1 year. The court shall enter an order stating the reason for the delay upon the court's records.	Defer further proceedings and place on probation. May place in drug treatment court if otherwise eligible.	Defer further proceedings and place on probation in drug treatment court.	Proceed to sentencing, place on probation in drug treatment court.
Caseload Reporting	Report as Guilty Plea, Bench Verdict, or Jury Verdict.	Report as Guilty Plea.	Report as Guilty Plea.	Report as Guilty Plea.
MSP Criminal History Reporting	No reporting.	Report deferred judgment of guilt.	Report deferred judgment of guilt if underlying crime is reportable.	Report conviction.
SOS Abstract Reporting	Report pursuant to MCL 257.732.	Report deferred if Minor in Possession, otherwise no reporting required.	None.	Report conviction if a reportable offense.
Court Record Status	Public.	Public, except Minor in Possession is non-public while on probation, HYTA non-public at time of assignment.	File Public, but record of participation in drug court non-public.	File Public, but record of participation in drug court non-public.
Probation Successful	Discharge as successful if on probation. Conviction remains unless nolle prosequi filed.	Discharge from probation and dismiss.	Discharge from probation and dismiss proceedings.	Proceed to sentencing.
MSP Criminal History Reporting	Report pursuant to MCL 769.16a.	Report successful completion of probation and dismissal.	Report successful completion of probation and dismissal, and participation in drug court.	Report successful completion of probation and participation in drug court.
SOS Abstract Reporting	Report pursuant to MCL 257.732.	Report dismissal if Minor in Possession, otherwise no reporting required.	None.	None.
Court Record Status	Public.	Non-public except Minor in Possession, which becomes public upon discharge.	Non-public.	File Public, but record of participation in drug court non-public.
Probation Unsuccessful	Proceed to sentencing. If on probation, discharge as unsuccessful.	Enter conviction. Discharge probation as unsuccessful.	Enter conviction. Discharge probation as unsuccessful.	Discharge probation as unsuccessful.
MSP Criminal History Reporting	Report pursuant to MCL 769.16a.	Report date conviction entered and sentence.	Report date conviction entered and sentence, and unsuccessful participation in drug court.	Report conviction and unsuccessful participation in drug court and sentence.
SOS Abstract Reporting	Report pursuant to MCL 257.732.	Report date conviction entered if a reportable offense.	Report date conviction entered on drug offenses.	None.
Court Record Status	Public.	Public.	File Public, but record of participation in drug court non-public.	File Public, but record of participation in drug court non-public.

¹ MCL 762.11, HYTA; MCL 333.7411, Controlled Substance; MCL 769.4a, Domestic Violence; MCL 750.350a, Parental Kidnapping; MCL 750.430, Health Professional Practicing Under Influence, MCL 436.1703, Minor in Possession of Alcohol.

² MCL 600.1070 uses the word “defer” but references the delayed sentence statute, MCL 771.1. Procedure somewhat follows other deferred judgment statutes. Not eligible if violent offender. [MCL 600.1060(g)] A person with a previous drug court dismissal, or charged with a traffic offense, is not eligible for defer/delay and dismissal in drug court.

³ Use when defendant is not eligible for discharge and dismissal; when charge is a traffic offense, or if already received a deferred judgment and dismissal in either drug court or pursuant to relevant section listed in note 1.

GUIDELINES FOR PROCESSING CIRCUIT AND DISTRICT COURT CASES UNDER DEFERRED JUDGMENT OF GUILT AND DELAYED SENTENCE STATUTES

The difference between a deferred judgment of guilt and a delayed sentence is that with a deferred judgment of guilt, although a plea may be taken, an adjudication of guilt is not entered at that time, but rather, is deferred until either successful completion of probation or violation occurs. A delayed sentence requires an adjudication of guilt to be entered by the court at the time a plea is taken.

Both deferred judgment of guilt and delayed sentences are reported on Caseload Part 2 as disposed by guilty plea, jury verdict, or bench verdict. They are not reported again at final disposition. They are reported on Caseload Part 4 as disposed.

Revised March 24, 2005

Statute	Monetary Assessments	Non-Public Record Status	Reporting Requirements
<p>MCL 436.1703 MIP effective 9/1/04</p> <p>Deferred Judgment of Guilt – Adjudication of guilt/responsibility is not entered.</p>	<p>Fines – Yes Costs – Yes Minimum State Cost – Yes (if any combination of fines, costs, assessments are ordered; otherwise, optional) Circuit Court Probation Supervision Fees – Yes District Court Probation Oversight Costs – Yes Crime Victim Rights – No</p> <p>Bond shall be applied to monetary sanctions.¹</p>	<p>The entire file becomes a non-public record <i>while proceedings are deferred and the individual is on probation</i>. The entire file includes recordings of court proceedings and transcripts. The record becomes public upon conviction or dismissal.²</p>	<p>Report deferred status as 1360R to SOS when deferred status granted and defendant is placed on probation. Include sentencing information for the Drunk Driving Audit. Report final disposition for either conviction or dismissal to SOS at disposition.</p>
<p>MCL 600.1070(b)(i) Drug Court legislation eff. 1/1/05</p> <p>Deferred Judgment of Guilt – Adjudication of guilt/responsibility is not entered.</p> <p>Applicable only to those individuals who pled guilty to an offense that is not a traffic offense and who may be eligible for discharge and dismissal upon successful completion of the drug treatment court program.</p> <p>*Drug Court legislation may be applicable under MCL 762.13 HYTA, MCL 333.7411, MCL 769.4a Domestic Violence, MCL 750.350a Parental Kidnapping, and MCL 750.430 Licensed Health Care Professional Practicing Under the Influence deferrals</p>	<p>During pendency of deferral: Fines – Yes Costs – Yes Minimum State Cost – Yes (if any combination of fines, costs, assessments are ordered; otherwise, optional). Circuit Court Probation Supervision Fees – Yes District Court Probation Oversight Costs – Yes Crime Victim Rights – Yes for all felony convictions, or if a Specified or Serious Misdemeanor. Drug Treatment Court Fee – Yes Costs of Treatment and Program Services – Yes</p> <p>Bond shall be applied to monetary sanctions.¹</p> <p>If deferral fails and conviction is entered, see footnote 9 for applicable assessments.</p>	<p>Drug Court participation and treatment information becomes a non-public record <i>after the order of discharge or dismissal is entered</i>. The entire file includes recordings of court proceedings and transcripts. Any statement or other information obtained as a result of participating in a preadmission screening and evaluation assessment under subsection (3) is confidential and is exempt from disclosure under the freedom of information act and shall not be used in a criminal prosecution, unless it reveals criminal acts other than, or inconsistent with, personal drug use. [MCL 600.1064(4)]³</p>	<p>Report deferred status on DC 243 or CC 243a or electronically to MSP. Report final disposition for either conviction or dismissal to MSP.</p>

Statute	Monetary Assessments	Non-Public Record Status	Reporting Requirements
<p>MCL 762.13 HYTA</p> <p>Deferred Judgment of Guilt – Adjudication of guilt/responsibility is not entered.</p>	<p>During pendency of deferral: Fines – Yes Costs – Limited¹⁰ Minimum State Cost – Yes (if any combination of fines, costs, assessments are ordered; otherwise, optional). Circuit Court Probation Supervision Fees – Yes District Court Probation Oversight Costs – Yes Crime Victim Rights – No</p> <p>Bond shall be applied to monetary sanctions.¹</p> <p>If deferral fails and conviction is entered see footnote 9 for applicable assessments.</p>	<p>The entire file becomes a non-public record <i>upon the decision by the court to apply HYTA</i> status to the case and until such time (if any) when the case loses its HYTA status. The entire file includes recordings of court proceedings and transcripts.⁴</p>	<p>Report deferred status on MC 242 or electronically to MSP. Report final disposition for either conviction or dismissal to MSP.</p>
<p>MCL 333.7411 Controlled Substance</p> <p>Deferred Judgment of Guilt – Adjudication of guilt/responsibility is not entered.</p>	<p>During pendency of deferral: Fines – No Costs – Limited¹⁰ Minimum State Cost – Yes (if any combination of fines, costs, assessments are ordered; otherwise, optional) Circuit Court Probation Supervision Fees – Yes District Court Probation Oversight Costs – Yes Crime Victim Rights – No</p> <p>Bond shall be applied to monetary sanctions.¹</p> <p>If deferral fails and conviction is entered, see footnote 9 for applicable assessments.</p>	<p>The entire file becomes a non-public record <i>after the order of discharge from probation is entered</i>. The entire file includes recordings of court proceedings and transcripts.⁵</p>	<p>Report deferred status on DC 243 or CC 243a or electronically to MSP. Report final disposition for either conviction or dismissal to MSP.</p>
<p>MCL 769.4a Domestic Violence</p> <p>Deferred Judgment of Guilt – Adjudication of guilt/responsibility is not entered.</p>	<p>During pendency of deferral: Fines – No Costs – Limited¹⁰ Minimum State Cost – Yes (if any combination of fines, costs, assessments are ordered; otherwise, optional). Circuit Court Probation Supervision Fees – Yes District Court Probation Oversight Costs – Yes Crime Victim Rights – No</p> <p>Bond shall be applied to monetary sanctions.¹</p> <p>If deferral fails and conviction is entered see footnote 9 for applicable assessments.</p>	<p>The entire file becomes a non-public record <i>after the order of discharge from probation is entered</i>. The entire file includes recordings of court proceedings and transcripts.⁶</p>	<p>Report deferred status on DC 243 or CC 243a or electronically to MSP. Report final disposition for either conviction or dismissal to MSP.</p>

Statute	Monetary Assessments	Non-Public Record Status	Reporting Requirements
<p>MCL 750.350a Parental Kidnapping</p> <p>Deferred Judgment of Guilt – Adjudication of guilt/responsibility is not entered.</p>	<p>During pendency of deferral: Fines – No Costs – Limited¹⁰ Minimum State Cost – Yes (if any combination of fines, costs, assessments are ordered; otherwise, optional). Circuit Court Probation Supervision Fees – Yes District Court Probation Oversight Costs – N/A Crime Victim Rights – No</p> <p>Bond shall be applied to monetary sanctions.¹</p> <p>If deferral fails and conviction is entered see footnote 9 for applicable assessments.</p>	<p>The entire file becomes a non-public record <i>after the order of discharge from probation is entered.</i> The entire file includes recordings of court proceedings and transcripts. ⁷</p>	<p>Report deferred status on DC 243 or CC 243a or electronically to MSP. Report final disposition for either conviction or dismissal to MSP.</p>
<p>MCL 750.430 Licensed Health Care Professional Practicing Under the Influence</p> <p>Deferred Judgment of Guilt – Adjudication of guilt/responsibility is not entered.</p>	<p>During pendency of deferral: Fines – No Costs – Limited¹⁰ Minimum State Cost – Yes (if any combination of fines, costs, assessments are ordered; otherwise, optional). Circuit Court Probation Supervision Fees – Yes District Court Probation Oversight Costs –Yes Crime Victim Rights – No</p> <p>Bond shall be applied to monetary sanctions.¹</p> <p>If deferral fails and conviction is entered, see footnote 9 for applicable assessments.</p>	<p>The entire file becomes a non-public record <i>after the order of discharge from probation is entered.</i> The entire file includes recordings of court proceedings and transcripts. ⁸</p>	<p>Report deferred status on DC 243 or CC 243a or electronically to MSP. Report final disposition for either conviction or dismissal to MSP</p>
<p>MCL 771.1 Delayed Sentence</p> <p>Adjudication of guilt/responsibility is entered.</p>	<p>During pendency of delay: Fines – No Costs – Limited¹⁰ Minimum State Cost – Yes (if any combination of fines, costs, assessments are ordered; otherwise, optional). Circuit Court Probation Supervision Fees – Yes District Court Probation Oversight Costs –Yes Crime Victim Rights – Yes for all felony convictions, or if a Specified or Serious Misdemeanor.</p> <p>Bond shall be applied to monetary sanctions.¹</p> <p>If conviction is entered, see footnote 9 for applicable assessments.</p>	<p>The entire file <i>remains public at all times.</i></p>	<p>Report final disposition of conviction on MC 219, CC 219a, DC 243, or CC 243a, or electronically to MSP.</p> <p>Report final disposition of dismissal on MC 262 or electronically to MSP.</p>

1. Any bond posted in the defendant's name shall be applied to fines and costs. Any bond posted in another's name shall be returned. [MCR 6.106(I)]
2. The non-public record shall be furnished to any of the following: (a) to a court, prosecutor, or police agency upon request for the purpose of determining if an individual has already utilized the subsection and, (b) to the department of corrections, a prosecutor, or a law enforcement agency, upon request, subject to the following conditions: (i) at the time of the request, the individual is an employee of the department of corrections, the prosecutor, or the law enforcement agency, or an applicant for employment with the department of corrections, the prosecutor, or the law enforcement agency, (ii) the record is used by the department of corrections, the prosecutor, or the law enforcement agency **only** to determine whether an employee has violated his or her conditions of employment or whether an applicant meets the criteria for employment. The non-public record shall also be open for use by the Department of Defense, the Department of State, the Department of Transportations, the Office of Personnel Management, the CIA and the FBI **only** for the purpose of determining eligibility for: (a) access to classified information, (b) assignment to or retention in sensitive national security duties, (c) acceptance or retention in the armed forces, and (d) appointment, retention, or assignment to a position of public trust or a critical or sensitive position while either employed by the government or performing a government contract. [5 USCS 9101(a) and (b)]. A defendant shall be allowed access to his or her court file even if it is being maintained as a non-public record.
3. The non-public record shall be open to the courts of this state, another state, or the United States, the department of corrections, law enforcement personnel, and prosecutors **only** for use in the performance of their duties or to determine whether an employee of the court, department, law enforcement agency, or prosecutor's office has violated his or her conditions of employment or whether an applicant meets criteria for employment with the court, department, law enforcement agency, or prosecutor's office. The non-public record shall also be open for use by the Department of Defense, the Department of State, the Department of Transportations, the Office of Personnel Management, the CIA and the FBI **only** for the purpose of determining eligibility for: (a) access to classified information, (b) assignment to or retention in sensitive national security duties, (c) acceptance or retention in the armed forces, and (d) appointment, retention, or assignment to a position of public trust or a critical or sensitive position while either employed by the government or performing a government contract. [5 USCS 9101(a) and (b)]. A defendant shall be allowed access to his or her court file even if it is being maintained as a non-public record.
4. The non-public record shall be open to the courts of this state, the department of corrections, the Family Independence Agency, law enforcement personnel, and prosecuting attorneys, **only** for use in the performance of their duties. The non-public record shall also be open for use by the Department of Defense, the Department of State, the Department of Transportations, the Office of Personnel Management, the CIA and the FBI **only** for the purpose of determining eligibility for: (a) access to classified information, (b) assignment to or retention in sensitive national security duties, (c) acceptance or retention in the armed forces, and (d) appointment, retention, or assignment to a position of public trust or a critical or sensitive position while either employed by the government or performing a government contract. [5 USCS 9101(a) and (b)]. A defendant shall be allowed access to his or her court file even if it is being maintained as a non-public record.
5. The non-public record shall be furnished: (a) to a court, police agency, or prosecutor upon request only for the purposes of determining whether the defendant in a criminal action is eligible for discharge and dismissal of proceedings by a drug treatment court pursuant to MCL 600.1076 or to show a defendant in a criminal action involving a controlled substance has already once utilized the statute/section, and (b) to the state department of corrections, a law enforcement agency, a court, or the office of a prosecuting attorney upon request of the department, law enforcement agency, court, or office of a prosecuting attorney, subject to all of the following conditions: (i) at the time of the request, the individual is an employee of the department, law enforcement agency, court, or office of prosecuting attorney or an applicant for employment with the department, law enforcement agency, court, or office of prosecuting attorney, (ii) if the individual is an employee of the department, law enforcement agency, court, or prosecuting attorney, the date on which the court placed the individual on probation occurred after March 25, 2002, and (iii) the record shall be used by the department of corrections, law enforcement agency, court, or prosecuting attorney **only** to determine whether an employee has violated his or her conditions of employment or whether an applicant meets criteria for employment. The non-public record shall also be open for use by the Department of Defense, the Department of State, the Department of Transportations, the Office of Personnel Management, the CIA and the FBI **only** for the purpose of determining eligibility for: (a) access to classified information, (b) assignment to or retention in sensitive national security duties, (c) acceptance or retention in the armed forces, and (d) appointment, retention, or assignment to a position of public trust or a critical or sensitive position while either employed by the government or performing a government contract. [5 USCS 9101(a) and (b)]. A defendant shall be allowed access to his or her court file even if it is being maintained as a non-public record.
6. The non-public record shall be furnished to a court or police agency upon request, or to an office of prosecuting attorney **only** for the purpose of showing that a defendant in a criminal action under MCL 750.81 and 750.81a, or a local ordinance substantially corresponding to section 81 of that act has already once availed himself or herself of this section or for the purpose of determining whether the defendant in a criminal action is eligible for discharge and dismissal of proceedings by a drug treatment court under MCL 600.1076. The non-public record shall also be open for use by the Department of Defense, the Department of State, the Department of Transportations, the Office of Personnel Management, the CIA and the FBI **only** for the purpose of determining eligibility for: (a) access to classified information, (b) assignment to or retention in sensitive national security duties, (c) acceptance or retention in the armed forces, and (d) appointment, retention, or assignment to a position of public trust or a critical or sensitive position while either employed by the government or performing a government contract. [5 USCS 9101(a) and (b)]. A defendant shall be allowed access to his or her court file even if it is being maintained as a non-public record.

7. The non-public record shall be furnished to either or both of the following: (a) to a court or police agency upon request **only** for the purpose of showing that a defendant in a criminal action has already availed himself or herself of this subsection, and (b) to a court, police agency, or prosecutor upon request **only** for the purpose of determining whether the defendant in a criminal action is eligible for discharge and dismissal of proceedings by a drug treatment court under MCL 600.1076. The non-public record shall also be open for use by the Department of Defense, the Department of State, the Department of Transportations, the Office of Personnel Management, the CIA and the FBI **only** for the purpose of determining eligibility for: (a) access to classified information, (b) assignment to or retention in sensitive national security duties, (c) acceptance or retention in the armed forces, and (d) appointment, retention, or assignment to a position of public trust or a critical or sensitive position while either employed by the government or performing a government contract. [5 USCS 9101(a) and (b)] . A defendant shall be allowed access to his or her court file even if it is being maintained as a non-public record.

8. The non-public record shall only be furnished to either or both of the following: (a) to a court or police agency upon request **only** for the purpose of showing whether the individual accused of violating this section has already once utilized this subdivision, and (b) to a court, police agency, or prosecutor upon request **only** for the purpose of determining whether the defendant in a criminal action is eligible for discharge and dismissal of proceedings by a drug treatment court under MCL 600.1076. The non-public record shall also be open for use by the Department of Defense, the Department of State, the Department of Transportations, the Office of Personnel Management, the CIA and the FBI **only** for the purpose of determining eligibility for: (a) access to classified information, (b) assignment to or retention in sensitive national security duties, (c) acceptance or retention in the armed forces, and (d) appointment, retention, or assignment to a position of public trust or a critical or sensitive position while either employed by the government or performing a government contract. [5 USCS 9101(a) and (b)]. A defendant shall be allowed access to his or her court file even if it is being maintained as a non-public record.

9. **Fines** – Yes; **Costs** – Yes; **Minimum State Cost** – Yes (if any combination of fines, costs, assessments are ordered; otherwise, optional); **Circuit Court Probation Supervision Fees**– Yes; **District Court Probation Oversight Costs** (if applicable) – Yes; **Crime Victim Rights** – Yes for all felony convictions, or if a Specified or Serious Misdemeanor; **Drug Treatment Court Fee** (if applicable) – Yes; **Costs of Treatment and Program Services** (if applicable) – Yes

10. Costs are limited to the expenses specifically incurred in prosecuting the defendant or providing legal assistance to the defendant and supervision of the probationer.

Criminal Sentencing/Administrative Consequences - Repeat Offender (Alcohol Convictions)

	OUIL/UBAC/OUID §625(1)	OWI §625(3)	OUIL/OWI Death/Injury §625(4) & (5)	Zero Tolerance §625(6)	Child Endangerment §625(7)	.04 CDL §625m(1)
1st Offense (no priors)	Misdemeanor Fine/Jail/Comm Svc: 1 or more of following: Up to 93 days jail; \$100 - \$500 fine; up to 45 days comm svc. Licensing: 30/150 susp./rest. Plate conf: None Immob: Permissive up to 180 days Reg Deny: None Forf: None	Misdemeanor Fine/Jail/Comm Svc: 1 or more of following: Up to 93 days jail; up to \$300 fine; up to 45 days comm svc. Licensing: 90 day rest Plate conf: None Immob: Permissive up to 180 days Reg Deny: None Forf: None	Felony Fine/Jail/Comm Svc: Death - prison up to 15 years OR \$2,500 - \$10,000 fine, or both. Injury - prison up to 5 years OR \$1,000 - \$5,000 fine OR both. Licensing: minimum 1 year revocation/denial Plate conf: None Immob: Required up to 180 days Reg Deny: None Forf: Permissive	Misdemeanor Fine/Jail/Comm Svc: Up to \$250 fine OR up to 60 days comm svc, or both. Licensing: 30 day rest. Plate conf: None Immob: None Reg Deny: None Forf: None	Misdemeanor Fine/Jail/Comm Svc: \$200 - \$1,000 fine AND one or more of the following: 5 days to 1 year jail; 30-90 days comm svc. Licensing: 90/90 susp./rest. Plate conf: None Immob: Permissive up to 180 days Reg Deny: None Forf: Permissive	Misdemeanor Fine/Jail/Comm Svc: Up to \$300 fine OR up to 93 days jail, or both. Licensing: CDL - 1yr susp, OPR 90 day rest., HAZ - 3 yr susp. Plate conf: None Immob: Permissive up to 180 days Reg Deny: None Forf: None
2nd Offense or any prior 625 crime within 7 years	Misdemeanor Fine/Jail/Comm Svc: \$200 - \$1,000 fine AND one or more of the following: 5 days to 1 year jail; 30-90 days comm svc. Licensing: minimum 1 year revocation/denial Plate conf: Required Immob: Required 90 to 180 days unless forfeited Reg Deny: None Forf: Permissive	Misdemeanor Fine/Jail/Comm Svc: \$200 - \$1,000 fine AND one or more of the following: 5 days to 1 year jail; 30-90 days comm svc. Licensing: minimum 1 year revocation/denial Plate conf: Required Immob: Required 90 to 180 days unless forfeited Reg Deny: None Forf: Permissive	Felony Fine/Jail/Comm Svc: Death - prison up to 15 years OR \$2,500 - \$10,000 fine OR both. Injury - prison up to 5 years OR \$1,000 - \$5,000 fine OR both. Licensing: minimum 5 year revocation/denial Plate conf: Required Immob: Required 90 to 180 days unless forfeited Reg Deny: None Forf: Permissive	Misdemeanor Fine/Jail/Comm Svc: One or more of the following: up to 60 days comm svc; up to \$500 fine; up to 93 days jail. Licensing: 90 day susp OR if prior §625 then minimum 1 year revocation/denial Plate conf: None Immob: None Reg Deny: None Forf: None	Felony Fine/Jail/Comm Svc: \$500 - \$5,000 fine AND either of the following: 1-5 years prison; probation with 30 days to 1 year jail AND 60-180 days comm svc. Licensing: minimum 1 year revocation/denial Plate conf: Required Immob: Required 90 to 180 days unless forfeited Reg Deny: None Forf: Permissive	Misdemeanor Fine/Jail/Comm Svc: Up to \$1,000 fine OR up to 1 year prison, or both. Licensing: CDL - minimum 10yr rev, OPR 1yr rev/den. Plate conf: Required Immob: Required 90 to 180 days Reg Deny: None Forf: None
3rd Offense or 2 prior 625 crimes within 10 years	Felony Fine/Jail/Comm Svc: \$500 - \$5,000 fine AND either of the following: 1-5 years prison; probation with 30 days to 1 year jail AND 60-180 days comm svc. Licensing: minimum 5 year revocation/denial Plate conf: Required Immob: Required 1 to 3 years unless forfeited Reg Deny: Required Forf: Permissive	Felony Fine/Jail/Comm Svc: \$500 - \$5,000 fine AND either of the following: 1-5 years prison; probation with 30 days to 1 year jail AND 60-180 days comm svc. Licensing: minimum 5 year revocation/denial Plate conf: Required Immob: Required 1 to 3 years unless forfeited Reg Deny: Required Forf: Permissive	Felony Fine/Jail/Comm Svc: Death - prison up to 15 years OR \$2,500 - \$10,000 fine OR both. Injury - prison up to 5 years OR \$1,000 - \$5,000 fine OR both. Licensing: minimum 5 year revocation/denial Plate conf: Required Immob: Required 1 to 3 years unless forfeited Reg Deny: Required Forf: Permissive		Endangerment - Zero Tolerance w/occupant <16 Misdemeanor Fine/Jail/Comm Svc: 1st - One or more of the following: up to 60 days comm svc; up to \$500 fine; up to 93 days jail. 2nd - \$200 - \$1,000 fine AND one or more of the following: 5 days to 1 year jail; 30-90 days comm svc. Licensing: 1st - 90/90 susp./rest. 2nd - revoke Plate conf: See 1st, 2nd offense Immob: See 1st & 2nd Reg Deny: None Forf: Permissive	Felony Fine/Jail/Comm Svc: \$500 - \$5,000 fine and either of the following: prison from 1 - 5 years; probation with 30 days to 1 year jail AND 60-180 days comm svc. Licensing: CDL - rev for LIFE--if prior approval, OPR- minimum 5 yr den/rev Plate conf: Required Immob: Required 1 to 3 years Reg Deny: Required Forf: None

Criminal Sentencing/Administrative Consequences - Repeat Offender (Driving While Suspended Convictions)

	DWLS §904(1)	Knowing Allowed Someone to DWLS §904(2)	DWLS Causing Death §904(4)	DWLS Causing Serious Injury §904(5)	Knowingly Allowed Someone to DWLS Causing Death §904(7)	Knowingly Allowed Someone to DWLS Causing Serious Injury §904(7)
1st Offense (no *priors)	Misdemeanor Fine/Jail/Comm Svc: Up to 93 days jail; up to \$500 fine, or both. Licensing: Mandatory additional under §904(10), (11) and (12) Plate conf: None. (Cancel upon notice by officer) Immob: None Reg Deny: None Forf: None	Misdemeanor Fine/Jail/Comm Svc: Up to 93 days jail; up to \$500 fine, or both. Licensing: Mandatory additional under §904(10), (11) and (12) Plate conf: None. (Cancel upon notice by officer) Immob: None Reg Deny: None Forf: None	Felony Fine/Jail/Comm Svc: Prison up to 15 years; \$2,500 - \$10,000 fine, or both. Licensing: minimum 1 year revocation/denial Plate conf: Required Immob: Required up to 180 days, unless forfeited. Reg Deny: None Forf: Permissive	Felony Fine/Jail/Comm Svc: Prison up to 5 years; \$1,000 - \$5,000 fine, or both. Licensing: minimum 1 year revocation/denial Plate conf: Required Immob: Required up to 180 days, unless forfeited. Reg Deny: None Forf: Permissive	Felony Fine/Jail/Comm Svc: Prison up to 5 years; \$1,000 - \$5,000 fine, or both. Licensing: None Plate conf: None Immob: None Reg Deny: None Forf: None	Felony Fine/Jail/Comm Svc: Prison up to 2 years; \$1,000 - \$5,000 fine, or both. Licensing: None Plate conf: None Immob: None Reg Deny: None Forf: None
2nd Offense or 1 * prior 904 susp within 7 years	Misdemeanor Fine/Jail/Comm Svc: Up to 1 year jail; up to \$1,000 fine, or both. Licensing: Mandatory additional under §904(10), (11) and (12) Plate conf: None. (Cancel upon notice by officer) Immob: Permissive up to 180 days Reg Deny: None Forf: None	Misdemeanor Fine/Jail/Comm Svc: Up to 1 year jail; up to \$1,000 fine, or both. Licensing: Mandatory additional under §904(10), (11) and (12) Plate conf: None. (Cancel upon notice by officer) Immob: Permissive up to 180 days Reg Deny: None Forf: None	Felony Fine/Jail/Comm Svc: Prison up to 15 years; \$2,500 - \$10,000 fine, or both. Licensing: minimum 5 year revocation/denial Plate conf: Required Immob: Required up to 180 days, unless forfeited. Reg Deny: None Forf: Permissive	Felony Fine/Jail/Comm Svc: Prison up to 5 years; \$1,000 - \$5,000 fine, or both. Licensing: minimum 5 year revocation/denial Plate conf: Required Immob: Required up to 180 days, unless forfeited. Reg Deny: None Forf: Permissive	Same as 1st offense.	Same as 1st offense.
3rd Offense or 2 * prior 904 susp within 7 years	Misdemeanor Criminal - Same. Licensing: Mandatory additional under §904(10), (11) and (12) Plate conf: Required Immob: 90 to 180 days Reg Deny: None Forf: None	Misdemeanor Criminal - Same. Licensing: Mandatory additional under §904(10), (11) and (12) Plate conf: Required Immob: 90 to 180 days Reg Deny: None Forf: None	Felony Criminal - Same. Licensing: minimum 5 year revocation/denial Plate conf: Required Immob: 90 to 180 days, unless forfeited. Reg Deny: None Forf: Permissive	Felony Criminal - Same. Licensing: minimum 5 year revocation/denial Plate conf: Required Immob: 90 to 180 days, unless forfeited. Reg Deny: None Forf: Permissive	Same as 1st offense.	Same as 1st offense.
4th Offense or 3 * prior 904 susp within 7 years	Misdemeanor Criminal - Same. Licensing: Mandatory additional under §904(10), (11) and (12) Plate conf: Required Immob: 90 to 180 days Reg Deny: Required Forf: None	Misdemeanor Criminal - Same. Licensing: Mandatory additional under §904(10), (11) and (12) Plate conf: Required Immob: 90 to 180 days Reg Deny: Required Forf: None	Felony Criminal - Same. Licensing: minimum 5 year revocation/denial Plate conf: Required Immob: 90 to 180 days, unless forfeited. Reg Deny: Required Forf: Permissive	Felony Criminal - Same. Licensing: minimum 5 year revocation/denial Plate conf: Required Immob: 90 to 180 days, unless forfeited. Reg Deny: Required Forf: Permissive		
5th Offense or 4 * prior 904 susp within 7 years	Misdemeanor Criminal - Same. Licensing: Mandatory additional under §904(10), (11) and (12) Plate conf: Required Immob: 1-3 years Reg Deny: Required Forf: None	Misdemeanor Criminal - Same. Licensing: Mandatory additional under §904(10), (11) and (12) Plate conf: Required Immob: 1-3 years Reg Deny: Required Forf: None	Felony Criminal - Same. Licensing: minimum 5 year revocation/denial Plate conf: Required Immob: 1-3 years, unless forfeited. Reg Deny: Required Forf: Permissive	Felony Criminal - Same. Licensing: minimum 5 year revocation/denial Plate conf: Required Immob: 1-3 years, unless forfeited. Reg Deny: Required Forf: Permissive		

*For purposes of immobilization, priors are defined as prior mandatory additional suspensions/revocations imposed pursuant to §904(10), (11) or (12); not prior convictions of DWLS.

MINOR IN POSSESSION OF ALCOHOL & INTOXICANTS IN A MOTOR VEHICLE

Revised 12/04

G:\MANUALS\PRBOFC\2005\Chart revised 12-04.doc	Minor Possess Alcohol MCL 436.1703(1)	Transport/Possess Open Alcohol in Motor Vehicle MCL 257.624a	Minor Transport/Possess Alcohol in Motor Vehicle MCL 257.624b
Public Act and Effective Date	2004 PA 63, 9-1-04	1996 PA 493, 4-1-97	1996 PA 493, 4-1-97
Original Jurisdiction	District, Municipal, and Family Division/Circuit Courts	District, Municipal, and Family Division/Circuit Courts	District, Municipal, and Family Division/Circuit Courts
Magistrate Authority to Accept Guilty Plea and Sentence	Yes, MCL 600.8511(a)(ix)	Yes, MCL 600.8511(a)(i)	Yes, MCL 600.8511(a)(i)
Case Type Code	District: SM, OM Family: DL	District: ST, OT Family: TL	District: ST, OT Family: TL
Violation Type Jail Penalty	Misdemeanor 2 nd conviction; 30 days ¹ 3 rd or subsequent conviction; 60 days ¹	Misdemeanor 90 Days Maximum	Misdemeanor 90 Days Maximum
Penal Fine	1st: Maximum \$100 2nd: Maximum \$200 3rd: Maximum \$500	Maximum \$100.00	Maximum \$100.00
Eligibility for Deferred Sentence	Yes, if no prior convictions or existing deferred sentence.	No	No
Prior convictions used for:	436.1703(1) (and former 436.33b) or substantially corresponding local ordinance: Fines, Jail, Deferred Sentence eligibility, SOS license action.	257.624a or 624b or substantially corresponding local ordinance: SOS license action.	257.624a or 624b or substantially corresponding local ordinance: SOS license action.
Vehicle Impoundment	No reference	No reference	15-30 days
License Suspension (Including substantially corresponding local ordinances)	Imposed by SOS: 2nd: 90-180 days 3rd: 180 days - 1 year	Imposed by SOS: 2nd: 90-180 days 3rd: 180 days - 1 year	Imposed by SOS: 2nd: 90-180 days 3rd: 180 days - 1 year

¹ Only if minor has been found to have violated an order of probation, failed to successfully complete any treatment, screening, or community service, or failed to pay any fine.

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License Restriction	2nd: after 30 days 3rd: after 60 days	2nd: after 30 days 3rd: after 60 days	2nd: after 30 days 3rd: after 60 days
Abstract	SOS Code: 1360 Deferred: 1360R 0 points	SOS Codes: 1300, 1300A Driver 2 points 1306, 1306A Passenger 2 points	SOS Codes: 1307, 1307A Driver 2 points 1308, 1308A Passenger 2 points
Fail to Appear in Court (FAC) Procedure	7-Day Notice.	7-Day Notice.	7-Day Notice.
Fail to Comply with Judgment (FCJ) Procedure	14-Day Notice.	14-Day Notice.	14-Day Notice.
Reinstatement Fee	\$125 at SOS for suspension as a result of conviction. \$45 at Court for FAC/FCJ	\$125 at SOS for suspension as a result of conviction. \$45 at Court for FAC/FCJ	\$125 at SOS for suspension as a result of conviction. \$45 at Court for FAC/FCJ
Alcohol Screening and Assessment	Permitted	Permitted	Permitted
Substance Abuse Treatment	Permitted	No reference	No reference
Community Service	Permitted	Permitted	Permitted
Plea Bargain	No reference	Prohibited from 257.625(6)	No reference
Drunk Driving Caseflow Management Fund Reimbursement	Not Included	Not Included	Not Included
MSP Drunk Driving Audit	Included; report all dispositions. Report deferred dismissals as Merit Dismissal. 436.1703(2) also included	No reference	No reference
Access to Record	Public at Court & SOS if conviction entered. Non-Public in Court while on probation with deferred sentence & at SOS during deferment and if discharged and dismissed.	Public at all times	Public at all times